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# SUPREME COURT OF THE UNITED STATES.

No. 684.—October Term, 1944.

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| Copperweld Steel Company, Appellant, *vs.* Industrial Commission of Ohio. | Appeal from the Supreme Court of the State of Ohio. |

[April 23, 1945.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellant conducts a manufacturing plant at Warren, Ohio, and is an employer as the term is defined by the workmen's compensation law of the State. In an original proceeding instituted in the Supreme Court, the State's highest tribunal, it challenged awards made to certain of its employees, alleging that the injuries suffered were not incurred in the course of, and did not arise out of, the employment; that the awards were, therefore, beyond the jurisdiction of the Industrial Commission which entered them, and, unless they were abrogated, the appellant would be deprived of its property without due process of law; further, that unless relief were afforded the appellant would be denied the equal protection of the laws.

From a decision sustaining a demurrer and granting judgment for the defendant[1] this appeal was taken. The appellee moved to dismiss. We postponed consideration of the motion to the hearing on the merits, as we were not satisfied that the appellant had properly presented in the court below any issue as to the infirmity of the state law under the federal Constitution, or that the judgment of the Supreme Court of Ohio did not rest on an application of state law adequate to support it.

The questions posed for our decision, the manner of their presentation to the state court and that court's disposition of them will be understood only in the light of the provisions of the workmen's compensation law, the commission's action under that law, and the character of the relief sought by the appellant.

The compensation law is of the compulsory type.[2] It is ad-

[1] The petition was held demurrable (142 O. S. 439) was amended, demurred to, and judgment for defendant was rendered on demurrer (143 O. S. 591).

[2] The summary of the statutory provisions is drawn from the General Code of Ohio, §§ 871-1-871-12; 871-38; 1465-37; 1465-53; 1465-54; 1465-60,-68,-69,-69a,-70,-72,-73,-74,-75,-90.

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ministered by an Industrial Commission, which classifies industries in respect of hazards, and fixes premiums to be paid by employers into a state fund for the benefit of injured workmen and the dependents of those killed. It may adopt merit ratings which reduce the premiums of employers having a low casualty rate.

Every employer subject to the Act is required either to pay premiums into the fund, or to qualify as a self-insurer. Payments of compensation for injury or death are made from the state fund in respect of employees of a contributing employer and are paid directly by a self-insuring employer. Employers of both classes are relieved of common-law liability for an employee's injury or death. Those, however, who fail to comply in one of the permissible ways remain liable at law, are denied certain defenses in an action by the employee or his representative and, with their officers, are liable to criminal penalties for failure to comply with the Act. Their employees may, nevertheless, elect to claim compensation, and if it is awarded, an action to recover the amount may be maintained against the employer. Such an action may also be maintained against a self-insuring employer who fails to pay an award.

Should an employer who is subject to the Act fail to pay premiums, or otherwise omit to comply, means are provided to fix civil liability upon him, even to the extent of the appointment of a receiver of his business.

The Commission has authority to hear and decide all questions within its jurisdiction. If it makes an award to a claimant its action is final. Neither the employer nor the claimant is given any appeal or right of review. If the Commission refuses an award on certain grounds specified in the Act the claimant may appeal to a court.

It is conceded by the appellee that if a self-insuring or a non-complying employer is sued for the amount of an award the defense is open to him that the employee granted the award was not injured in the course of his employment or that the injury did not arise out of the employment. In the case of a complying employer who pays premiums into the state fund no such defense is open, for the award is paid from the fund and he is not a party to the transaction.

We turn now to the facts alleged in appellant's petition. So far as material they follow. The men who were injured or killed were employees in appellant's plant. At the close of their work they left the plant in an automobile and chose one of several ways

of egress,—a public road, which at a short distance from the plant crossed the Baltimore & Ohio Railroad's track. While crossing this track the automobile was struck by a train. The Commission, despite appellant's representation that the resulting injuries and deaths were not compensable under the Act, entered awards. By its amended petition the appellant showed that as a result of the inclusion of the awards in its accident experience its premiums had been greatly increased.

On the first hearing the Supreme Court overruled appellant's contention that § 871-38 of the code authorized the institution of proceedings in that court to set aside compensation awards. Treating the petition as one for a writ of prohibition, the court held that remedy unavailable to control the action of the Commission in rendering awards. If considered as an application for mandamus, the court found that the provisions of the workmen's compensation law precluded the issuance of the writ. Construing the prayer as one for injunction the court held that the law of Ohio invested it with no original jurisdiction in equity, and that general equity jurisdiction is conferred on the Courts of Common Pleas of the State. These are all rulings as to the law of Ohio, and, as such, we are without power to review them.

In its amended petition the appellant insisted that its purpose was to raise questions of constitutionality; and that it was without remedy against the loss of its merit rating and the increase of its premiums unless the court should set aside the awards.

In a second opinion the court noticed these allegations. It held that as appellant was not a party to the compensation proceeding and as the awards were payable, not by the appellant, but by the state fund, in which appellant had no property interest, it could not be said that payment of the awards deprived appellant of any property. It said that appellant's interests could be affected only when it was called on to pay increased premiums as a result of the awards, and adverted to the fact that appellant could refuse to pay premiums, and defend a suit for them brought under § 1465-75 of the Act. As to this the appellant urges that the penalties, civil and criminal, which would be imposed upon it and its officers if it pursued such a course amount to a denial of all remedy. Of this more hereafter.

In respect of the denial of equal protection the court below seems not to have dealt with the argument as presented in this court. It quoted decisions which sustained as reasonable classifications of employers for imposition of varying rates of premium adjusted to the risks incident to their enterprises. Except as

above noted, it had nothing to say to the appellant's contention that whereas self-insurers and non-compliers may make the defense of excess of the Commission's jurisdiction when sued for the amount of an award, it cannot assert such a defense when sued for premiums. In our view the answer to both of the constitutional contentions, though not clearly expressed below, is that it does not appear the appellant is without remedy, if entitled to redress. For it is stated, without contradiction, that there are courts in the state having general equity jurisdiction, and if resort to a defense at law involves the perils and penalties the appellant asserts, we are not advised that equity will not consider an application for relief. Certainly we can neither require the Supreme Court to exercise a jurisdiction it finds is not conferred upon it by law, nor express any view as to the relief to which the appellant may be entitled, in advance of its availing itself of a forum apparently not foreclosed to it for the protection of its asserted constitutional rights.

What has been said assumes that we have jurisdiction of the appeal. The assumption involves the answer to two questions. First, were questions under the Fourteenth Amendment presented and decided below? We think that the appellant disclosed, and the court below understood, that the provisions of the Fourteenth Amendment of the federal Constitution were invoked. Not only does the Ohio Constitution embody no provisions in the words of that Article but it is doubtful that it contains any equivalent provisions. While the appellant's petition did not mention the Amendment it used the exact phraseology in which it is couched. The pleadings and the expressions found in the opinions lead us to conclude that questions under the federal charter were presented and considered.

Secondly, was the constitutional validity of the state statute drawn in question? If not, we have no jurisdiction on appeal. But, as violation of the federal Constitution by the decision of the state court, is, in any case, involved, we have jurisdiction to review the decision on certiorari (28 U. S. C. 344(c)). The question of the propriety of entertaining the appeal need not be decided, in the view we take of the basis of the state court's judgment. Inasmuch as we conclude that decision was grounded upon the view that the appellant had not pursued the remedy afforded by state law for the vindication of any constitutional right it claimed was violated, we must dismiss the appeal, and deny certiorari.

*So ordered.*

4-23-44 (2)

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1944

## No. 684

COPPERWELD STEEL COMPANY, APPELLANT,

vs.

INDUSTRIAL COMMISSION OF OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED NOVEMBER 15, 1944.

# SUPREME COURT OF THE UNITED STATES

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*vs.*

INDUSTRIAL COMMISSION OF OHIO

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APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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[fol. 1] [Caption omitted]

[fol. 2] [File endorsement omitted]

[fol. 3] **IN THE SUPREME COURT OF OHIO**

No. 29746

COPPERWELD STEEL COMPANY, Warren, Ohio, Plaintiff,

v.

THE INDUSTRIAL COMMISSION OF OHIO, Consisting of Will T. Blake, James A. White, and G. L. Coffinberry, Defendant

PETITION—Filed September 4, 1943

Now comes Copperweld Steel Company and for its petition says that it is, and at all times was, a corporation operating an industrial plant near the city of Warren, Ohio, and an employer contributing to the State Insurance Fund and otherwise fully complying with the Workmen's Compensation Laws of Ohio, and further that:

*First Cause of Action*

Under date of June 11, 1943, the defendant entered an order, of which this plaintiff was notified June 16, 1943, in Claim numbered 1567631 on its docket, that one Sylvia Diomataris, for herself and in behalf of her infant son, Gus Diomataris, as dependents of Isidoros Diomataris an employee of plaintiff herein, was entitled to Workmen's Compensation and payment of medical and funeral bills from the State Insurance Fund, by reason of the death of Isidoros (otherwise known as Isadore or Steve) Diomataris, husband [fol. 4] and father of the said Sylvia and Gus Diomataris respectively, resulting from a collision, hereinafter more particularly described, between an automobile and a railroad train on November 13, 1941.

Thereafter and on or about the 2nd day of July, 1943, the plaintiff filed with the defendant its petition for hearing and reconsideration of the claim and order aforesaid, for vacation of such order and disallowance of such claim; and upon hearing thereof the defendant, under date of August 9, 1943, again entered an order that Sylvia Diomataris for

and in behalf of herself and infant son, Gus Diomataris, was entitled to Workmen's Compensation and the payment of medical and funeral expenses from the State Insurance Fund by reason of the death of Isadoros Diomataris. The finding in such order that the injury which resulted in decedent's death was not purposely self-inflicted is contrary to the uncontroverted evidence before the Commission and is not supported by any evidence.

*Second Cause of Action*

Under date of June 11, 1943, the defendant entered an order, of which this plaintiff was notified June 16, 1943, in Claim numbered 1567632 on its docket, for the payment of medical and funeral expenses from the State Insurance Fund by reason of the death of Leon (otherwise known as Leonidas) Serres, an employe of plaintiff herein, resulting from a collision, hereinafter more particularly described, between an automobile in which he was riding and a railroad train on November 13, 1941.

[fol. 5] Thereafter and on or about the 2nd day of July, 1943, the plaintiff filed with the Industrial Commission its petition for hearing and reconsideration of the claim and order aforesaid, for the vacation of such order and disallowance of such claim; and upon hearing thereof the defendant, under date of August 9, 1943, again entered an order for the payment of medical and funeral expenses from the State Insurance Fund by reason of the death of Leon (otherwise known as Leonidas) Serres.

*Third Cause for Action*

Under date of June 11, 1943, the defendant entered an order, of which this plaintiff was notified June 16, 1943, in Claim numbered 1567660 on its docket, that one Costas Perris, as an employe of plaintiff herein, was entitled to Workmen's Compensation and payment of medical expenses from the State Insurance Fund by reason of injuries sustained by him in a collision between an automobile in which he was riding and a railroad train on November 13, 1941. The claimant had previously made application for and received and accepted payment of accident disability and surgical expense benefits by reason of the same injuries under a group insurance policy by the terms of which such benefits

were not payable if the injuries arose out of or in the course of any employment for wage or profit.

Thereafter on or about July 2, 1943, the plaintiff filed its petition for hearing and reconsideration of the claim and order aforesaid, for vacation of such order and disallowance of such claim; and thereafter, on or about the 12th day of [fol. 6] July, 1943, filed it- amendment to such petition; and upon hearing thereof the defendant under date of August 9, 1943, again entered its order that Costas Perris was entitled to Workmen's Compensation and payment of medical expenses from the State Insurance Fund by reason of the injuries aforesaid.

*Fourth Cause of Action*

Under date of June 11, 1943, the defendant entered an order, of which this plaintiff was notified June 16, 1943, in Claim numbered 1567661 on its docket, that one Markos Mamoujelos, as an employe of plaintiff herein, was entitled to Workmen's Compensation and payment of medical expenses from the State Insurance Fund by reason of injuries sustained by him in a collision between an automobile in which he was riding and a railroad train on November 13, 1941. The claimant had previously made application for and received and accepted payment of accident disability and surgical expense benefits by reason of the same injuries under a group insurance policy by the terms of which such benefits were not payable if the injuries arose out of or in the course of any employment for wage or profit.

Thereafter on or about July 2, 1943, the plaintiff filed with the defendant its petition for hearing and reconsideration of the claim and order aforesaid, for vacation of such order and disallowance of such claim; and upon hearing thereof the defendant under date of August 9, 1943, again entered its order that Markos Mamoujelos was entitled to Workmen's Compensation and payment of medical ex- [fol. 7] penses from the State Insurance Fund by reason of the injuries aforesaid.

*Fifth Cause of Action*

Under date of June 11, 1943, the defendant entered an order, of which this plaintiff was notified June 16, 1943, in Claim numbered 1568161 on its docket, that one Antonios (otherwise known as Antonio or Anthony) Spanolios, as an

employe of plaintiff herein, was entitled to Workmen's Compensation and payment of medical expenses from the State Insurance Fund by reason of injuries sustained by him in a collision between an automobile in which he was riding and a railroad train on November 13, 1941. The claimant had previously made application for and received and accepted payment of accident disability and surgical expense benefits by reason of the same injuries under a group insurance policy by terms of which such benefits were not payable if the injuries arose out of or in the course of any employment for wage or profit.

Thereafter on or about July 2, 1943, the plaintiff filed with the defendant its petition for hearing and reconsideration of the claim and order aforesaid, for vacation of such order and disallowance of such claim; and upon hearing thereof, the defendant under date of August 9, 1943, again entered its order that Antonios Spanolios was entitled to Workmen's Compensation and payment of medical expenses from the State Insurance Fund by reason of the injuries aforesaid.

[fol. 8] *Sixth Cause of Action*

Under date of June 11, 1943, the defendant entered an order of which this plaintiff was notified June 16, 1943, in Claim numbered 1570313 on its docket, that one Tom Russ, as an employe of plaintiff herein, was entitled to Workmen's Compensation and payment of medical expenses from the State Insurance Fund by reason of injuries sustained by him in a collision between an automobile in which he was riding and a railroad train on November 13, 1941. The claimant had previously made application for and received and accepted payment of accident disability and surgical expense benefits by reason of the same injuries under a group insurance policy by the terms of which such benefits were not payable if the injuries arose out of or in the course of any employment for wage or profit.

Thereafter on or about July 2, 1943, the plaintiff filed its petition for hearing and reconsideration of the claim and order aforesaid, for vacation of such order and disallowance of the claim; and upon hearing thereof, the defendant under date of August 9, 1943, again entered its order that Tom Russ was entitled to Workmen's Compensation and pay-

ment of medical expenses from the State Insurance Fund by reason of the injuries aforesaid.

In addition to the particular allegations of the several causes of action above, plaintiff alleges, in respect and as a part of each and all of them, that:

[fol. 9] All of the injuries and deaths involved in the claims referred to in each of the causes of action hereinbefore set forth resulted from the collision of an automobile driven by Isidoros Diomataris and in which the other injured and deceased men were riding as passengers, with a regular through freight train of the Baltimore and Ohio Railroad Company on the morning of November 13, 1941, after the injured and deceased men had finished their work at the plant of Copperweld Steel Company, left the plant, entered the automobile and proceeded a distance of not less than 700 feet over a roadway to a grade crossing on land owned and maintained by the railroad company. The approach of the train for at least 1000 feet before it reached the crossing at which the collision occurred was clearly visible to the driver and occupants of the automobile involved in the collision aforesaid, during the entire distance traveled by them. The passengers in the automobile had called the attention of the driver, Diomataris, to, and warned him of, the approach of the train which was within his view and requested him to stop the car to avoid a collision; but nevertheless, willfully and knowing that a collision would occur if he did not heed the warning and request of his passengers, he proceeded to overtake and pass another automobile which had stopped to permit the train to pass and drove upon the intersection into collision with the train. The hazards at the crossing at which the collision occurred were not greater than those to which the general public were subject and were in nowise created or increased by the employment or by the operation of the plaintiff's plant but were in fact much [fol. 10] less than the hazards to which the general public was subject, particularly at other railroad crossings on public highways which it would have been necessary for the deceased and injured men to traverse in going to their homes; they were likewise much less than the hazards at crossings of railroads and public highways which it was necessary for men employed at other point in and near

the city of Warren to traverse in going to and from their homes and work.

The orders of the defendant are unreasonable and unlawful for the following reasons, to-wit:

(a) The collison which resulted in the injuries and deaths involved in the claims aforesaid did not arise in the course of or out of the employment of any of the employees and had no casual relation thereto.

(b) The finding in each of such orders that the employe's injury was sustained in the course of his employment is not supported by any evidence, but is contrary to the uncontroverted evidence before the Commission.

(c) The findings and orders of the Commission in each of the claims other than the Diomataris claim disregard and are contrary to the admission against interest of each of the claimants, by the sworn allegations in a petition involving the same injuries filed by each of such claimants in the Court of Common Pleas of Trumbull County, Ohio, against the administrator of the estate of the driver, Diomataris, that the driver knew he was driving his automobile toward the railroad crossing, that a train was approaching within his view, that he proceeded to drive around and overtake an automobile immediately preceding him and willfully, wantonly, and recklessly drove his automobile across [fol. 11] the railroad although he had been warned and his attention called to said railroad crossing and approaching train and requested to stop his car and avoid a collision, knowing the location of the approaching train and that collision was inevitable unless he arrested the speed or stopped his car.

(d) The railroad and the road, at the crossing of which the collision causing the injuries and deaths involved herein occurred, had been constructed and were in use long prior to the acquisition by plaintiff of its plant; and the immediate hazards which caused the collision of the train and of the automobile were created by the Baltimore and Ohio Railroad Company and the deceased driver, Isidoros Diomataris.

(e) The orders of the defendant are contrary to law, constitute a gross abuse of discretion, if any, and of

the power and authority, of the defendant and are beyond the jurisdiction of the defendant.

(f) The aforesaid orders of the Commission unless vacated, prohibited or enjoined will result in the merit, or individual, rating of the plaintiff's Workmen's Compensation risk to the prejudice of plaintiff, and in unlawfully charging and collecting from the plaintiff premiums therefor in excess of those which should and may legally be charged and collected.

(g) The aforesaid orders of the Commission, unless vacated, prohibited or enjoined, will deprive the plaintiff of its property without due process of law and will deny it the equal protection of the laws.

(h) By reason of the foregoing, unless the defendant be prohibited and enjoined from proceeding to make payments under the orders aforesaid, and from taking into consideration any payments made thereunder in the merit, or individual, rating of this plaintiff's Workmen's Compensation risk, and unless such orders be set aside and vacated, this plaintiff will suffer irreparable damage which for it has no other remedy in the ordinary course of law.

[fol. 12] Wherefore plaintiff prays that each and all of the aforesaid orders of the Industrial Commission be set aside, vacated and reversed; that the aforesaid claims and each of them be disallowed; that a writ issue prohibiting and enjoining the defendant from continuing such orders or any of them in effect, from making any payments thereunder, from taking into consideration any payments which may have been made thereunder in the merit or individual rating of the plaintiff's Workmen's Compensation risk, and requiring the defendant to vacate such orders and disallow such claims; and for all such further relief to which the plaintiff may be entitled.

Robert G. Day, Second National Bldg., Warren, Ohio,
E. P. McHugh, Jr., Republic Bldg., Cleveland, Ohio, Attorneys for Plaintiff.

[fols. 13-16] *Duly sworn to by William B. Klee, Jr. Jurat omitted in printing.*